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Date:

September 25, 2009

TY:

Legend

Parent =

Target =

Oldco =

Newco =

State X =

Business A =

Business B =

\$x =

\$y =

z =

Effective
Time =

Dear :

This letter responds to your July 17, 2009 letter from your authorized representatives requesting rulings on certain federal income tax consequences of a proposed transaction. The information provided in this letter is summarized below.

Parent is an exempt organization described in section 501(c)(3) and is not a private foundation by virtue of being described in section 509(a)(2). Parent owns all of the outstanding shares of Target common and preferred stock (collectively, the "Target Stock"). Target has engaged in Business A since 1994. Target is a holding company that owns joint ventures but has no domestic subsidiaries and thus files a stand-alone Federal income tax return. Target expects to have approximately \$x of net operating loss ("NOL") carryovers as of the end of its taxable year ending at the Effective Time.

Parent also owns all the outstanding shares of Oldco common stock (the "Oldco Stock"). Additionally, Parent holds a convertible debt obligation of Oldco (the "Oldco Convertible Debt"). Oldco and its taxable subsidiaries engage in Business B. Because Parent is not an includible corporation within the meaning of section 1504(b), Oldco files a consolidated Federal income tax return as the common parent of the Oldco group. The Oldco group expects to have approximately \$y of NOL carryovers as of the end of its taxable year ending at the Effective Time.

For what it represents to be valid business reasons, Parent proposes to combine Business A and Business B under the following integrated, multi-step plan (collectively, the "Transactions"), in the order prescribed, and with the intent to achieve a particular end result. Steps 2 through 5 will occur at the Effective Time.

Step 1: Parent will incorporate Newco.

Step 2: Parent will contribute all of the Oldco Stock to Newco.

Step 3: Oldco will convert under State X law from a corporation into a limited liability company with a single member, Newco. Immediately thereafter, Newco will assume all of Oldco's obligations under the Oldco Convertible Debt.

Step 4: Parent will contribute all of the Target Stock to Newco, and Newco will issue to Parent additional shares of Newco common stock.

Step 5: Target will convert under State X law from a corporation into a limited liability company with a single member, Newco.

There will be no dissenting shareholders to any step in the Transactions. Oldco may transfer certain assets to a joint venture or otherwise dispose of these assets, either prior to, or subsequent to the Effective Time. These assets are not critical to Oldco's continuing business operations. Such transfer or other disposition would be unrelated to and not dependent on the Transactions.

Representations relevant to Steps 1 through 3 as a single transaction constituting a section 368(a)(1)(F) reorganization

- (a) In the Transactions, Newco will acquire Oldco's assets in exchange for shares of the single class of Newco common stock outstanding and the assumption by Newco of Oldco's liabilities (including Oldco's obligations under the Oldco Convertible Debt). The number of shares of Newco common stock issued will equal the number of shares of Oldco Stock outstanding immediately before the acquisition, and the rights and privileges of each share of Newco common stock received will be substantially the same as the rights and privileges of each common share of Oldco Stock surrendered therefor. Newco will issue only common stock to Parent, and will issue no preferred stock.
- (b) Immediately following Steps 1 through 3 of the Transactions, Newco will own the same assets and have the same liabilities as Oldco owned or had immediately before the Transactions.
- (c) The Newco stock received (or deemed received) by Oldco will be distributed to the Oldco shareholder (Parent) in a complete liquidation pursuant to a plan of reorganization.
- (d) Oldco will cease to exist for Federal income tax purposes (although it will continue to exist as a limited liability company for State X law purposes).
- (e) The fair market value of Newco stock received by the Oldco shareholder (Parent) will be equal to the fair market value of Oldco Stock surrendered in the Transactions.
- (f) All the Newco stock issued prior to Step 4 will be issued in respect of Oldco Stock, except for a nominal number of shares issued to facilitate Newco's organization.
- (g) The stock ownership of Newco following Steps 1 through 3 of the Transactions will be the same as the stock ownership of Oldco prior to the Transactions, which is to say that Parent will wholly own 100% of Oldco's equity immediately before

Steps 1 through 3 of the Transactions, and will wholly own 100% of Newco's equity after those steps.

- (h) At the Effective Time, Oldco will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Oldco.
- (i) Newco will not hold any property or have any tax attributes (including those specified in section 381(c)) immediately before the Transactions, except for (I) any nominal amount of assets held to facilitate Newco's organization or to preserve its existence as a corporation, and (II) tax attributes related to holding such assets or proceeds.
- (j) At the Effective Time, Newco will have no plan or intention to sell or otherwise dispose of any of Oldco's assets acquired in the Transactions, except for dispositions made in the ordinary course of business, a potential transfer of assets representing less than ten percent of the fair market value of Oldco's total assets to a joint venture or other party, or transfers described in Treas. Reg. § 1.368-2(k)(2).
- (k) Oldco incurred the liabilities assumed by Newco in the ordinary course of its business. The liabilities will be associated with the assets transferred.
- (l) Newco, Oldco, and the Oldco shareholder (Parent) will pay their respective expenses, if any, incurred in connection with the Transactions.
- (m) At the Effective Time, Oldco will not be under the jurisdiction of a court under title 11 of the United States Code (a bankruptcy proceeding), or a receivership, foreclosure, or similar proceeding in federal or state court, within the meaning of section 368(a)(3)(A).
- (n) At the Effective Time, the fair market value of Oldco's assets transferred to Newco will equal or exceed the sum of its liabilities plus the amount of liabilities, if any, to which its assets will be subject.

Representations relevant to Steps 4 and 5 as a single transaction (the "Merger Transactions") constituting a section 368(a)(1)(D) reorganization

- (aa) In the Merger Transactions, Newco will acquire Target's assets in exchange for Newco common stock and the assumption by Newco of Target's liabilities. Newco will actually issue z shares of Newco common stock (that is, actual shares), but Newco, Target, and Parent agree to treat Newco as issuing additional shares of its common stock (that is, deemed shares) such that the fair market value of such actual and deemed shares will be approximately equal to

the net fair market value of Target's assets immediately before the acquisition, and to account for the deemed shares for Federal income tax purposes as if they were actual shares as described in the representations below.

- (bb) The actual and deemed shares of Newco stock received by Target will be distributed to the Target shareholder (Parent) in a complete liquidation of Target pursuant to a plan of reorganization. Parent agrees to follow the methodology of Treas. Reg. § 1.358-2(a)(2)(iii) for purposes of determining its basis in its Newco stock actually owned after the Transactions to account for the actual and deemed shares received by Target.
- (cc) Target will cease to exist for Federal income tax purposes (although it will continue to exist as a limited liability company for State X law purposes).
- (dd) The fair market value of shares of Newco stock received by the Target shareholder (Parent) will be approximately equal to the fair market value of Target Stock surrendered in the Merger Transactions.
- (ee) Neither Newco nor any person related to Newco (within the meaning of Treas. Reg. § 1.368-1(e)(3)) has a plan or intention to reacquire any of its stock issued in the Merger Transactions.
- (ff) At least forty percent of the proprietary interest in Target will be exchanged constructively for Newco stock, and will be preserved (within the meaning of Treas. Reg. § 1.368-1(e)).
- (gg) During the five-year period ending at the Effective Time, neither Target nor any person related to Target (within the meaning of Treas. Reg. § 1.368-1(e)(3)) will have acquired any Target Stock.
- (hh) Newco will acquire at least ninety percent of the fair market value of Target's net assets and at least seventy percent of the fair market value of Target's gross assets held by Target immediately before the Merger Transactions. For purposes of this representation, amounts used by Target to pay its reorganization expenses, and amounts paid to shareholders with respect to Target Stock (except for regular, normal dividends) made by Target immediately before the Merger Transactions, are included as Target's assets held immediately before the Merger Transactions.
- (ii) After the Merger Transactions, the Target shareholder (Parent) will be in control of Newco within the meaning of section 368(a)(2)(H).
- (jj) At the Effective Time, and taking into account the Oldco Convertible Debt it will assume, Newco will not have outstanding any warrants, options, convertible

securities, or any other type of right pursuant to which any person could acquire stock in Newco that, if exercised or converted, would affect Parent's acquisition or retention of control of Newco, as defined in section 368(a)(2)(H).

- (kk) At the Effective Time, Newco will have no plan or intention to sell or otherwise dispose of any of Target's assets acquired in the Merger Transactions, except for dispositions made in the ordinary course of business or transfers described in Treas. Reg. § 1.368-2(k)(2).
- (ll) Target incurred the liabilities assumed by Newco in the ordinary course of its business. The liabilities will be associated with the assets transferred.
- (mm) After the Effective Time, Newco (or members of its qualified group, as defined in Treas. Reg. § 1.368-1(d)(4)(ii)) will continue Target's historical business or use a significant portion of Target's historical business assets in a business. In particular, Newco will continue to operate Business A through joint ventures in the same fashion as Target operated through joint ventures.
- (nn) Newco, Target, and the Target shareholder (Parent) will pay their respective expenses, if any, incurred in connection with the Transactions.
- (oo) At the Effective Time, there will be no intercorporate indebtedness existing between Target and Newco that was issued, acquired, or will be settled at a discount.
- (pp) At the Effective Time, no party to the Merger Transactions will be an investment company as defined in section 368(a)(2)(F)(iii) and (iv).
- (qq) At the Effective Time, neither Newco nor Target will be under the jurisdiction of a court under title 11 of the United States Code (a bankruptcy proceeding), or a receivership, foreclosure, or similar proceeding in federal or state court, within the meaning of section 368(a)(3)(A).
- (rr) At the Effective Time, the fair market value of Target's assets transferred to Newco will equal or exceed the sum of its liabilities plus the amount of liabilities, if any, to which its assets will be subject.
- (ss) The fair market value of the assets of Newco will exceed the amount of the liabilities of Newco immediately after the Merger Transactions.

Miscellaneous representations

- (aaa) (I) Immediately before the Effective Time, the net equity value of Target Stock will be greater than the net equity value of Oldco Stock. (II) Immediately after the

Effective Time, more than fifty percent of the total fair market value of Newco's assets over the liabilities of Newco (and entities controlled by Newco) will be attributable to Newco's acquisition of Target's assets. (III) The Target shareholder (Parent), immediately before the Effective Time and as a result of owning Target Stock, will own immediately after the Effective Time more than fifty percent of the fair market value of the outstanding stock of Newco.

- (bbb) The includible corporations in the affiliated group of which Newco will be its common parent will properly elect to file a consolidated Federal income tax return for its first taxable year (which will commence the day immediately following the Effective Time).

Based upon the information submitted and the representations provided, we rule as follows:

1. For Federal income tax purposes, Steps 1 through 3 of the Transactions will be viewed as if Newco acquires Oldco's assets in exchange for stock of Newco and the assumption of any liabilities of Oldco by Newco, and then Oldco distributes the Newco stock to its shareholder in exchange for Oldco Stock in complete liquidation. So viewed, the steps will qualify as a reorganization within the meaning of section 368(a)(1)(F). Rev. Rul. 87-27, 1987-1 C.B. 134. Oldco and Newco will each be "a party to reorganization" within the meaning of section 368(b).
2. Oldco will recognize no gain or loss on the transfer of its assets to Newco in exchange for Newco stock and the assumption by Newco of Oldco's liabilities. Sections 361(a) and 357(a).
3. Oldco will recognize no gain or loss on the distribution of each share of Newco stock to the Oldco shareholder (Parent) in exchange for each share of Oldco Stock. Sections 361(c)(1) and (c)(3).
4. The Oldco shareholder (Parent) will recognize no gain or loss upon the receipt of Newco stock in exchange for its Oldco Stock. Section 354(a)(1).
5. The aggregate basis of the Oldco shareholder (Parent) in the shares of Newco stock received as a result of Steps 1 through 3 of the Transactions will be the same as its aggregate basis in its shares of Oldco Stock surrendered in exchange therefor. Section 358(a)(1) and Treas. Reg. § 1.358-2.
6. The holding period of the Oldco shareholder (Parent) in the shares of Newco stock received will include the period during which it held the shares of Oldco Stock surrendered in exchange therefor, provided that the Oldco Stock is held as a capital asset on the date of the exchange. Section 1223(1).

7. Newco will recognize no gain or loss on the receipt of Oldco's assets in exchange for Newco stock and the assumption of Oldco's liabilities. Section 1032(a).
8. Newco's basis in each asset of Oldco acquired will be the same as the basis of the asset in the hands of Oldco immediately before the acquisition. Section 362(b).
9. Newco's holding period for each asset of Oldco acquired will include the period for which the asset was held by Oldco. Section 1223(2).
10. As provided by section 381(c)(2) and Treas. Reg. § 1.381(c)(2)-1, Newco will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of Oldco as of the Effective Time. Any deficit in the earnings and profits of Newco or Oldco will be used only to offset the earnings and profits accumulated after that time.
11. Pursuant to section 381(a) and Treas. Reg. § 1.381(a)-1, Newco will succeed to and take into account the items of Oldco described in section 381(c) as of the Effective Time. These items will be taken into account by Newco subject to the conditions and limitations specified in sections 381, 382, 383, and 384, and the regulations thereunder.
12. For Federal income tax purposes, the Merger Transactions will be viewed as if Newco acquires Target's assets in exchange for the actual and deemed shares of Newco stock and the assumption of any liabilities of Target by Newco, and then Target distributes the actual and deemed shares of Newco stock to the Target shareholder in exchange for Target Stock in complete liquidation. So viewed, the steps will qualify as a reorganization within the meaning of section 368(a)(1)(D). Rev. Rul. 2004-83, 2004-2 C.B. 157. Target and Newco will each be "a party to a reorganization" within the meaning of section 368(b).
13. Target will recognize no gain or loss on the transfer of its assets to Newco in exchange for actual and deemed shares of Newco stock and the assumption by Newco of Target liabilities. Sections 361(a) and 357(a).
14. Target will recognize no gain or loss on the distribution of actual and deemed shares of Newco stock to the Target shareholder (Parent) as a result of the Merger Transactions. Sections 361(c)(1) and (c)(3).
15. The Target shareholder (Parent) will recognize no gain or loss on the receipt of actual and deemed shares of Newco stock in exchange for its Target Stock as a result of the Merger Transactions. Section 354(a).

16. The basis of the Target shareholder (Parent) in the actual and deemed shares of Newco stock received in connection with the Merger Transactions will be the same as its basis in the shares of Target Stock surrendered in exchange therefore in connection with the Merger Transactions, allocated in the manner described in Treas. Reg. § 1.358-2(a)(2)(iii). Section 358(a)(1) and Treas. Reg. § 1.358-2.
17. The holding period of the Target shareholder in each share of Newco stock received in connection with the Merger Transactions will include the period during which it held the share of Target Stock surrendered in exchange therefor, provided that the Target Stock was held as a capital asset on the date of the exchange. Section 1223(1).
18. Newco will recognize no gain or loss on the receipt of Target's assets in exchange for Newco stock and the assumption of Target's liabilities in connection with the Merger Transactions. Section 1032(a).
19. Newco's basis in each asset of Target acquired will be the same as the basis of the asset in the hands of Target immediately before the Merger Transactions. Section 362(d).
20. Newco's holding period for each asset of Target acquired in connection with the Merger Transactions will include the period for which the asset was held by Target. Section 1223(2).
21. As provided by section 381(c)(2) and Treas. Reg. § 1.381(c)(2)-1, Newco will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of Target as of the Effective Time. Any deficit in the earnings and profits of Newco or Target will be used only to offset the earnings and profits accumulated after that time.
22. Pursuant to section 381(a) and Treas. Reg. § 1.381(a)-1, Newco will succeed to and take into account the items of Target described in section 381(c) as of the Effective Time. These items should be taken into account by Newco subject to the conditions and limitations specified in sections 381, 382, 383, and 384, and the regulations thereunder.
23. Newco's acquisition of Target's assets in connection with the Merger Transactions will constitute a reverse acquisition within the meaning of Treas. Reg. § 1.1502-75(d)(3), with Newco treated as the first corporation and Target as the second corporation. Rev. Ruls. 72-322, 1972-1 C.B. 287, and 73-303, 1972-2 C.B. 315. As a result, the consolidated group of which Oldco was the common parent will cease to exist as of the Effective Time, and the members of the Oldco

consolidated group will become members of a new consolidated group with Newco as the common parent. Treas. Reg. § 1.1502-75(d)(3)(i).

24. All taxable years of the Oldco consolidated group ending on or before the Effective Time will be treated as separate return limitation years (“SRLYs”) with respect to the Newco consolidated group. The separate return years of Target will not be treated as SRLYs with respect to the Newco consolidated group. Thus, any tax attributes of Target that carry over to a taxable year of the Newco consolidated group beginning after the Effective Time will not be subject to a SRLY limitation because they will not have arisen in a SRLY. Any tax attributes of the Oldco consolidated group that carry over to a taxable year of the Newco consolidated group beginning after the Effective Time will be subject to a SRLY limitation because they will have arisen in a SRLY. Treas. Reg. § 1.1502-1(f)(3).
25. In the case of those tax attributes of the Oldco consolidated group that carry over to a taxable year of the Newco consolidated group beginning after the Effective Time and that are subject to the SRLY rules of Treas. Reg. § 1.1502-21(c) and other provisions that incorporate those rules, the SRLY subgroup will be composed of each member of the Oldco group that will carry part of such attributes to the Newco group (the loss member), and each other member of the Oldco group that will become a member of the Newco group at the same time. Each other member of the SRLY subgroup will remain in the subgroup until it ceases to be affiliated with the loss member. Treas. Reg. § 1.1502-21(c)(2)(i). In particular, the context requires that Newco be included in the SRLY subgroup as the successor to Oldco. Treas. Reg. §§ 1.1502-21(f)(4) and 1.1502-1(f)(4).
26. The Newco consolidated group will compute the SRLY limitation by including in the cumulative SRLY register the relevant items of income, gain, loss, and deduction of Newco, and each other member of the Newco consolidated group that was also a member of the Oldco consolidated group. Treas. Reg. § 1.1502-21(c)(1) and (2). In particular, Newco’s items properly accounted for after the Effective Time will be included in the register without regard to whether the items are attributable to Business A or Business B. The context will require the register not to include the items of income, gain, loss, or deduction of Target properly accounted for on or before the Effective Time (that is, outside the Newco consolidated group).
27. The Oldco consolidated group will be treated as the terminating group within the meaning of Treas. Reg. § 1.1502-13(j)(5). Thus, the Newco consolidated group will be treated as the Oldco consolidated group for purposes of applying Treas. Reg. § 1.1502-13 to the intercompany transactions of the terminating group. Treas. Reg. § 1.1502-13(j)(5)(ii). Any intercompany items and corresponding items from intercompany transactions between members of the Oldco consolidated group will be taken into account under Treas. Reg. § 1.1502-13 by

the Newco consolidated group. Similarly, the Oldco consolidated group will be treated as the terminating group within the meaning of Treas. Reg. § 1.1502-19(c)(3)(i). Thus, the Newco consolidated group will be treated as the surviving group for purposes of applying Treas. Reg. § 1.1502-19 to any excess loss account that a member of the Oldco consolidated group will have in the stock of another member if both such members are members of the Newco consolidated group immediately after the Oldco consolidated group ceases to exist (that is, the day immediately following the Effective Time).

28. No share of Newco stock will be section 306 stock in the hands of the Newco shareholder (Parent). Section 306(c)(1)(B) and Rev. Rul. 76-387, 1976-2 C.B. 96.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Virginia S. Voorhees

Virginia S. Voorhees
Senior Technician Reviewer
Branch 6
Office of Associate Chief Counsel
(Corporate)